

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Implementation of the Local  
Competition Provisions of the  
Telecommunications Act of 1996

CC Docket No. 96-98

To: The Commission

**REPLY COMMENTS OF CENTENNIAL CELLULAR CORP.**

Centennial Cellular Corp. ("Centennial"), by its attorneys, herein replies to comments filed by certain other parties with respect to Section 251(f)(2) of the Telecommunications Act of 1996<sup>1</sup> in the Commission's notice of proposed rule making ("Notice") released on April 19, 1996 in the above-captioned proceeding.

**The Commission Can And Should Provide State Commissions  
With Guidance On How To Interpret Section 251(f)(2) Of  
The Telecommunications Act Of 1996**

In its comments, Centennial urged the Commission to establish certain standards to assist the states in satisfying their obligations under Section 251(f)(2) of the 1996 Act.<sup>2</sup> That Section provides the states and local exchange carriers ("LECs") with a procedure by which a LEC may be able to obtain a suspension or modification of the interconnection obligations contained in subsections (b) and (c) of Section 251. Centennial demonstrated

<sup>1</sup>Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

<sup>2</sup>Centennial Comments at 10-17.

that the Commission can and should establish standards to guide the State commissions in interpreting the criteria set forth in Section 251(f)(2). Specifically, Centennial noted that the legislative intent of this provision is very specific in stating that Section 251(f)(2) is to be used to create a "level playing field" and that the protection afforded a LEC in Section 251(f)(2) must be limited to those situations where a modification or suspension of one or more interconnection obligations would promote the establishment of a "level playing field."

Centennial pointed out that the legislative history states that Section 251(f)(2) is particularly applicable where "a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than the resources of the company or carrier" requests interconnection with the petitioning local exchange carrier. Section 251(f)(2) is definitely not intended to protect local exchange carriers from interconnection obligations to smaller or similarly-sized carriers that have fewer or similar resources. Section 251(f)(2) must be viewed as a vehicle to promote competition in the local exchange arena. Accordingly, Centennial concluded that the Commission should issue guidelines clearly reflecting that the discretion of the State commissions to entertain such a petition is very limited.

Numerous commenters, including ILECs, interexchange carriers, telephone and cable television trade associations, among others, joined Centennial in urging the Commission to establish standards to guide the State commissions in interpreting the criteria set forth in Section 251(f)(2).<sup>3</sup> For example, USTA stated that the Commission should adopt standards to create the uniformity and consistency among the States needed by small and mid-size LECs with multi-state operations.

[T]here should be some consistency in application of the suspensions and modifications among states. Consistency is important for small and mid-size LECs which may operate in more than one state so that they do not have to meet different requirements in each state. To add to that consistency, USTA recommends that the Commission adopt standards to assist the states when ruling on petitions of suspensions or modification under Section 251(f)(2).<sup>4</sup>

The NCTA, although with different motivations, also believes Commission guidance is necessary as evidenced by the following statement:

The Commission should make clear that suspensions or modifications that would frustrate the Act's objectives of promoting competitive choice for telecommunications and encouraging new entry are presumptively

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<sup>3</sup>See e.g., Telefonica Larga Distancia ("TDL") Comments at 3-19; Cincinnati Bell Telephone Company Comments at 42; United States Telephone Association ("USTA") Comments at 91-92; General Communication, Inc. Comments at 17-18; Citizens Utilities Company ("Citizens Utilities") Comments at 37; National Cable Television Association ("NCTA") Comments at 63-66; and TeleCommunications Carriers for Competition Comments at 70-71.

<sup>4</sup>USTA Comments at 92.

impermissible. [fn omitted] Likewise, the public interest requirement implies that grant of the waiver would provide a benefit to the public, rather than simply to the carrier itself. [fn omitted]<sup>5</sup>

Widespread suspensions or modifications of Section 251 will frustrate the core purposes of the Act by undermining Congress' efforts to establish a national policy to remove barriers to competition. States and ILECs should not be permitted, through the waiver process, to impose new barriers or avoid the requirements or impose barriers and thereby subvert the uniform policy intended by Congress.<sup>6</sup>

A similar sentiment is expressed by TLD, an interexchange carrier, who, like Centennial, argues forcefully that the pro-competitive policies of the 1996 Act and the legislative history of Section 251(f)(2) require Commission guidelines to assist the State commissions as they satisfy their obligations under Section 251(f)(2).<sup>7</sup> TLD "suggests a number of standards that the Commission can use to provide State commissions with the necessary guidance, without limiting their flexibility to address the particular regional and local market issues that require their expertise."<sup>8</sup>

The opposition of a few commenters to a Commission role in this area is based on their mistaken belief that Congress'

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<sup>5</sup>NCTA Comments at 65.

<sup>6</sup>Id. at 65-66.

<sup>7</sup>TLD Comments at 2-19.

<sup>8</sup>Id. at 2, 11-16.

reservation to the States of the decision-making role in 251(f)(2) precludes a Commission role in providing the States with guidance in exercising their authority.<sup>9</sup> These commenters view the States decision-making role in a vacuum, without contextual reference to the rest of the 1996 Act or the pro-competition objective of the legislation.<sup>10</sup> It is axiomatic that Section 251(f)(2) must be read as part of the 1996 Act.

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<sup>9</sup>See e.g., Western Alliance Comments at 6-7; Minnesota Independent Coalition ("MIC") Comments at 13-16. MIC makes the wholly unwarranted assumption that any Commission guidelines in this area would necessarily "impede the States' sole authority". MIC Comments at 16. MIC's efforts to parlay the Commission's tentative conclusion that the States alone have authority to make determinations under section 251(f) into an admission that the Commission cannot issue guidelines to assist the States in satisfying their obligations under Section 251(f)(2) are baseless. The mandatory language used by Congress to establish the States' authority to entertain petitions and make determinations under Section 251(f)(2) does not negate the ability of the Commission to provide the States with guidance in satisfying their statutory obligations.

<sup>10</sup>Some commenters make a passing reference to Section 251(f) in general and then state their opposition in an argumentative but conclusory, unproductive and, ultimately, an uninformative manner. See e.g., Florida Public Service Commission Comments at 38; Illinois Commerce Commission Comments at 84; GVNW, Inc./Management Comments at 41; MIC Comments at 15 (MIC states, without any attempt at explanation, that "it is doubtful that the establishment of standards to define terms such as "bona fide" requests, "unduly economically burdensome," and "technically feasible" would be of significant assistance to the States, even if meaningful standards could be established."). This group of commenters serve only to register an opposition without adding anything to the discussion sought by the Commission. Centennial submits that these comments should be given only the weight of their minimal content.

It is clear that the interconnection obligations established in Sections 251(b) and (c) of the 1996 Act are the centerpiece of the pro-competition policies established by Congress. Section 251(f)(2) provides the states and the LECs with a procedure by which a state may grant a suspension or modification of the interconnection obligations contained in subsections (b) and (c) of Section 251 to a qualifying LEC. Read in context, Section 251(f)(2) must be implemented in the pro-competitive spirit of the 1996 Act.

Commission responsibility in assuring that Section 251(f)(2) is implemented in a manner consistent with the pro-competition objectives of the 1996 Act and its legislative history is not an entirely voluntary matter. In Section 251(d)(1), Congress requires the Commission to establish rules and regulations to govern the implementation of the entirety of Section 251, including the interconnection obligations in Sections 251(b) and (c) as well as the suspension and modification process in Section 251(f)(2). In view of the importance of the interconnection obligations in establishing a competitive local exchange landscape and the Commission's assigned role in implementing Section 251, including the Congressionally mandated obligations, there should be no question that the Commission can and should establish standards to guide the State commissions in interpreting the criteria set forth in Section 251(f)(2).

Particularly compelling are supportive comments by two ILECs who would appear to qualify as petitioners under Section 251(f)(2). As stated by Citizens Utilities, "[t]his reservation of exclusive jurisdiction to the states, however, does not necessarily rule out Commission guidelines for state use in dealing with Section 251(f) issues."<sup>11</sup> Similarly, Cincinnati Bell Telephone Company, Inc. ("Cincinnati Bell") concurs, stating that "[w]hile the decision as to whether a suspension or modification should be granted under the Act rests with state commissions, CBT believes that this Commission has an important and critical role to play in the process."<sup>12</sup>

The fact that the States presumably "provide the best fora for considering local conditions affecting competitive opportunities" is an argument in favor of giving the State commissions the authority to entertain and rule on the petitions for suspension or modification.<sup>13</sup> It does not, however, diminish the need for Commission guidelines to assist the State commissions in exercising that authority in a manner consistent with Congressional intent. In sum, Commission guidance in this area does not usurp the decision-making authority of the State commissions with respect to petitions filed pursuant to Section 251(f)(2). Instead, it serves

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<sup>11</sup>Citizens Utilities Comments at 37.

<sup>12</sup>Cincinnati Bell Comments at 42.

<sup>13</sup>Pacific Telesis Group Comments at 99.

to assure that the petition vehicle and the criteria set forth in Section 251(f)(2) are interpreted by the State commissions in a uniform manner that is faithful to the pro-competitive objectives of the 1996 Act as a whole and the legislative history of this Section in particular.

A few commenters express reservations concerning the effect of any Commission guidelines for State implementation of Section 251(f) on rural telephone companies only. For example, the National Exchange Carriers Association ("NECA") does not oppose the issuance of Commission guidelines for Section 251(f) generally but adds a caution that the Commission should consider the impact on rural telephone companies.<sup>14</sup> The Wyoming Public Service Commission ("WPSC") refers to Section 251(f) in general but expresses concern solely with respect the "special challenges" that rural telephone companies face.<sup>15</sup> Similarly, the Public Utilities Commission of Ohio ("PUCO") references Section 251(f) in general but argues only that the "1996 Act requires only the states to make determinations regarding rural telephone company exemptions, suspensions and modifications."<sup>16</sup>

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<sup>14</sup>NECA Comments at 11-13.

<sup>15</sup>WPSC Comments at II-53 and II-54.

<sup>16</sup>PUCO Comments at Section F.

The Commission should distinguish subsection (f)(1) which pertains solely to rural telephone companies from subsection (f)(2) which applies to any LEC with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide. The distinction is critical since subsection (f)(2) affords several Tier 1 carriers and numerous Tier 2 carriers a vehicle to avoid the interconnection obligations contained in Sections 251(b) and (c) while subsection (f)(1) affords the possibility of an exemption from such obligations to a much more select group of LECs - those with less than 100,000 access lines.<sup>17</sup> The danger to the pro-competition objectives of the 1996 Act posed by the States' unbridled discretion to interpret the criteria in subsection (f)(2) to grant modifications, suspensions or exemptions of the interconnection obligations of the subject ILECs is much more serious than in the case of a group of truly rural telephone companies under subsection (f)(1).

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<sup>17</sup>See e.g., NECA Comments at 12-13 (incorrectly refers to (f)(2) when addressing whether the Commission should issue guidelines regarding "bona fide" requests as that term is used in (f)(1); PUCO Comments at Section F; Western Alliance Comments at 6-7; WPSC Comments at II-53 and II-54.

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May 30, 1996

### CONCLUSION

Wherefore, for the reasons stated in its comments as well as for the foregoing reasons, Centennial urges the Commission to establish national standards to provide guidance on Section 251(f)(2) along the lines recommended by Centennial in its May 16, 1996 initial comments in this proceeding.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Robert S. Childress, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "Comments of Centennial Cellular Corp." in CC Docket No. 96-98, was served this 30th day of May, 1996, via hand delivery, upon the following:

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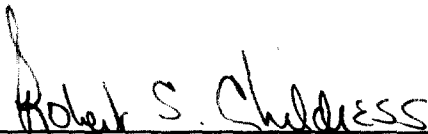
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